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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,004	01/22/2004	Seiji Aiso	MIPFP077	8937
25920 7590 07/19/2007 MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085			EXAMINER KRASNIC, BERNARD	
			ART UNIT 2624	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/764,004	<b>Applicant(s)</b> AISO, SEIJ	
	<b>Examiner</b> Bernard Krasnic	<b>Art Unit</b> 2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 7-8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/28/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The Applicant elects claims 1-8 and 23-24 in the reply filed on 06/11/2007. Claims 9-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected subcombination, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 06/11/2007.

### ***Specification***

2. The disclosure is objected to because of the following informalities:  
Page 1, line 4: The -- CROSS REFERENCE TO RELATED APPLICATIONS -- section of the specification is required to be placed above the "Background of the Invention" section to inform of any related applications, in this case the Foreign Priority application "Japan 2003-15171 01/23/2003".

Appropriate correction is required.

### ***Claim Objections***

3. Claims 1-2, 5-8, and 23-24 are objected to because of the following informalities:  
Claims 1 and 23, line 7, claim 2, lines 3 and 6, claim 24, line 8 respectively: "on the basis" should be -- on a basis --.  
Claims 5 and 6, lines 2-3 respectively: "on the basis of the total" should be -- on a basis of a total --.

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Claims 7 and 8, line 3: "to the total" should be -- to a total --.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

4. Claim 24 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 24 is drawn to functional descriptive material NOT claimed as residing on a computer readable medium. MPEP 2106.IV.B.1(a) (Functional Descriptive Material) states:

"Data structures not claimed as embodied in a computer-readable medium are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer."

"Such claimed data structures do not define any structural or functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized."

Claim 24, while defining a "recording medium on which a computer program is recorded", does not define a "computer-readable medium" and is thus non-statutory for that reasons. A "recording medium on which a computer program is recorded" can range from paper on which the program is written, to a program simply contemplated and memorized by a person. The examiner suggests amending the claim to embody the program on "computer-readable medium" in order to make the claim statutory. "A recording medium on which a computer program is recorded, the computer program being used for acquiring" in claim 24, lines 1-2, should be -- A computer-readable medium encoded with computer-readable instructions for causing the computer to

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acquire --. Similarly, "the computer program causing a computer to attain the functions of" in claim 24, line 7, should be -- the computer-readable instructions causing the computer-readable medium to attain the functions of --.

"In contrast, a claimed computer-readable medium encoded with the data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory."

- MPEP 2106.IV.B.1(a)

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2, and 23-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Herman et al (U.S. 6,075,905).

Re Claim 1: Herman discloses an image generating method / mosaic image construction for acquiring a plurality of frames / selecting source images of data from video data / images from a sequence of frames having a multitude of frames of data (see Fig. 1, col. 2, lines 65-67, col. 3, lines 1-3), the data representing tones / color, contrast, and intensity of an image by means of a multitude of pixels / digital image (see col. 1, line 11), and synthesizing the plurality of frames of data to generate image data / mosaic image for representing by means of multitude of pixels the tones of an output

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image for an image output device (see Fig. 1, col. 2, lines 65-67, col. 3, lines 1-3), the method comprising the steps of (a) determining, on the basis of image quality setting data / source image selection (102) that allows setting of image quality / good quality of the output image, a number of frames of data / set of source images for acquisition from the video data / video sequence, and acquiring / selecting the determined number of frames of data from the video data (see Fig. 1, col. 4, lines 22-27, Step 1: Source Image Selection); and (b) synthesizing the acquired number of frames of data and generating / merging (106) the image data / mosaic image (see Fig. 1, col. 5, lines 47-49, Step 5: Merging).

Re Claim 2: Herman further discloses the steps of (c) acquiring, on the basis of the plurality of frames of data / source images, deviation data / alignment parameter data representing deviation / shift, rotate, dilate, or/and projective among images / source images represented by the plurality of frames of data (see Fig. 1, col. 4, lines 43-52, Step 2: Image Alignment); and (d) performing a conversion process / alignment (103) wherein, on the basis of the acquired deviation data, at least one of the respective images represented by the plurality of frames of data is moved / shifted, rotated, dilated, or/and projected to convert at least one of the plurality of frames / source images of data in order to reduce deviation / each is in registration with corresponding portions among images (see Fig. 1, col. 4, lines 43-52, Step 2: Image Alignment), wherein the step (b) synthesizes the plurality of frames of data / selecting source images (102) subjected to

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the conversion process / alignment (103) and generates / merging (106) the image data / mosaic image (see Fig. 1, col. 2, lines 65-67, col. 3, lines 1-3).

As to claim 23, the claim is the corresponding system claim to claim 1 respectively. The discussions are addressed with regard to claim 1.

As to claim 24, the claim is the corresponding computer readable medium for storing a program claim to claim 1 respectively. The discussions are addressed with regard to claim 1.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman in view of Miyake (U.S. 6,804,419 B1). The teachings of Herman have been discussed above.

However, as recited in claim 3, Herman fails to specifically disclose that higher image quality indicated by the image quality setting data, increases the number of the frames acquired.

Miyake discloses higher image quality / enhancing image quality indicated by the image quality setting data / setting upper limit of b, increases the number of the frames acquired / increase number of frames for use (see col. 10, lines 65-67).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Herman's method using Miyake's teachings by specifically including to Herman's Image Selecting Step the idea that the image quality increases as the number of frames increases in order to enhance the interpolation for generating the high resolution image from these lower resolution frame images (see Miyake, col. 10, lines 65-67, abstract, lines 1-2).

As to claim 4, the discussions are addressed with respect to claim 3.

9. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herman as modified by Miyaki, and further in view of Inuzuka et al (U.S. 6,784,891 B2). The teachings of Herman as modified by Miyaki have been discussed above.

Herman as modified by Miyake, as recited in claim 5, further discloses that the number of frames of data / selected source images [Herman teaches the selected source images, col. 4, lines 22-27, Fig. 1, Source Image Selection] for acquisition / selection [Herman teaches the selection, col. 4, lines 22-27, Fig. 1, Source Image Selection] is determined on basis of the image quality setting data / source image selection (102) [Herman teaches the source image selection 102, col. 4, lines 22-27, Fig. 1, Source Image Selection, Miyaki teaches that the higher image quality results in



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the need for an increase in the needed acquisition of number of frames] and acquires the determined number of frames of data from the video data / video sequence [Herman, col. 4, lines 22-28].

However, Herman as modified by Miyaki fails to specifically disclose that the number of frames of data for acquisition is determined on basis of the total number of pixels in the frame data.

Inuzuka discloses the number of frames of data for acquisition is determined on basis of the total number of pixels in the frame data (see col. 1, lines 47-48, "in order to enhance an image quality, the number of pixels and frame rate are increased", higher image quality results in the need for a larger number of pixels in each frame and Miyaki teaches above that image quality determines the number of frames needed).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Herman's method, as modified by Miyaki, using Inuzuka's teachings by including to Herman's Image Selecting Step the idea that the image quality increases as the number of pixels in each frame increases allowing Herman's Image Selecting Step to further consider the number of pixels in each frame when determining the number of source images that are desirable to construct Herman's mosaic in order to further provide a relationship between the concept of number of pixels needed for a certain image quality and for a certain number of frames needed (see Inuzuka, col. 1, lines 47-48).

As to claim 6, the discussions are addressed with respect to claim 5.

***Allowable Subject Matter***

10. Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Atkin discloses an automatic image montage system; Szeliski et al discloses a block adjustment method and apparatus for construction of image mosaics; Miyaki discloses picture processor and method and computer readable storage medium.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bernard Krasnic whose telephone number is (571) 270-1357. The examiner can normally be reached on Mon-Thur 8:00am-4:00pm and every other Friday 8:00am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on (571) 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Bernard Krasnic  
June 26, 2007

  
JINGGE WU  
SUPERVISORY PATENT EXAMINER